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IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1966**

**No. 749**

SARAH McINNES, *et al.*,

*Petitioners,*

*against*

THE PORT OF NEW YORK AUTHORITY,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI

## BRIEF FOR RESPONDENT IN OPPOSITION

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### Question Presented

Is a substantial question raised under the due process clause of the Fourteenth Amendment by the condemnation of petitioners' property (a) for uses concededly public within the meaning of said clause (b) pursuant to legislation which is concededly constitutional—merely because petitioners claim that the state court misconstrued the legislation by holding that it authorized the functional plan of the project for which the condemnation was brought?

### Argument

This is the second time these merchants have asked this Court to review a decision of the New York Court

of Appeals concerning the World Trade Center in New York City. The first time was in 1963 in litigation challenging the constitutionality of the World Trade Center legislation (Ch. 209, Laws of N. Y. 1962); *Courtesy Sandwich Shop, Inc.* v. *Port of New York Authority,* 12 N. Y. 2d 379, app. dism. 375 U. S. 78, reh. den. 375 U. S. 960. There, it was held that the statute was constitutional because it authorized condemnation only for valid public uses. This Court dismissed petitioners' appeal for want of a substantial federal question.*

Since then, the Port Authority has moved forward to discharge its statutory duty to effectuate the World Trade Center. On July 12, 1965, the Senate Public Works Committee gave the approval required under the Federal Buildings Act of 1959 to the recommendation by the General Services Administration that the United States Custom Service, customs clearance and appraisal activities in New York City be consolidated in the World Trade Center. 111 Cong. Rec. 16123-4 (July 14, 1965). On September 9, 1965, the House Committee on Public Works recorded its approval. 111 Cong. Rec. 23371 (Sept. 17, 1965).

On September 30, 1965, the Port Authority instituted this condemnation proceeding in the New York State Supreme Court, New York County. Petitioners contended in the New York courts that the floor space which the Port Authority proposed to allocate for New York State and Port Authority offices within the Center was legislatively unauthorized.** Each of the three New York courts has, in turn, overruled this objection. The Court of Appeals held:

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* Present petitioners include one of the appellants in the prior case. The same association of merchants sought both reviews.

** The overwhelming majority of property owners on the World Trade Center site have not objected to the condemnation and seek only a prompt determination of the just compensation due them.

> "The eligibility of the occupancy by the State of New York and the Authority itself is specifically covered by section 2 [of the legislation] which makes a distinction between governmental services related to the World Trade functions, activities and services and other governmental services. * * * The tenancy of the State of New York appears to be fully within the contemplation of the Legislatures as an accommodation of other governmental services set out in the statute; and the housing of the Port Authority, a bi-State governmental agency, also qualifies under this category. The Port Authority should also be considered eligible on the ground that the Port Authority is itself engaged in a World Trade function * * *. Approximately two thirds of the space within the center is planned for the use of tenants directly involved in World Trade purposes; approximately one sixth is allocated to space devoted to governmental tenants and the remainder, approximately one sixth, to be used for support and service purposes." 18 N. Y. 2d 250, 254.

While petitioners vaguely suggest that the facts might be reviewed by this Court (Pet. 18), they do not take issue with the factual accuracy of the Court of Appeals' description of the plan. Their quarrel is with the Court of Appeals' holding that this plan is authorized by the legislation and they deem this question of statutory interpretation somehow is a due process question.

Petitioners concede that the statute under which the proceeding was brought is constitutional under *Courtesy* (Pet. 6, 8). They concede that the statute authorizes not only centralization of world trade functions but, under a binding interpretation, accommodation of State and Port Authority governmental office space as well (Pet. 17-18). They concede that all these functions—which are the only ones to be accommodated—represent public uses for which condemnation is permitted under the due process clause (Pet. 13). Nevertheless, they claim that the plan, as a totality of its concededly authorized parts, is not authorized by the legislation and that a due process question arises merely out of

their disagreement with the State courts' contrary interpretation of the statutory language.*

This Court has for many years now found no substantial Federal question, even in appeals to review the constitutionality of statutes, where the only question involved was the validity of the public use for which condemnation was authorized. *Courtesy Sandwich Shop, Inc.* v. *Port of New York Authority, supra; Cannata* v. *City of New York,* 371 U. S. 4 (1962); *Grisanti* v. *City of Cleveland,* 371 U. S. 68 (1962); *Annbar Associates* v. *West Side Redevelopment Corp.,* —— U. S. —— (35 U. S. L. Week 3112 Oct. 11, 1966) (No. 152). *A fortiori* this petition raises no substantial due process question. The question here is one only of statutory interpretation as to whether or not the specific plans for a specific public structure fall within the contemplation of constitutional legislation under which the proceeding is brought.

No citation is, or can be, offered for petitioners' argument that this question presents an issue of due process. In determining the existence of such an issue, this Court is

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* Petitioners claim that the Port Authority's plans do not follow the statutory scheme because the legislation makes world trade functions "primary" whereas, it is said, the Port Authority has subordinated them to the relocation of State government offices. The answer is in the uncontested fact that the space allocations are two-thirds for world trade occupancies (including the Port Authority) and one-sixth for State governmental offices. If petitioners mean something different by "primary" purpose than this, then we submit that the argument is frivolous:—there is statutory compliance when, as here, the public officers who are under statutory mandate produce objectively what the legislature required and any different subjective evaluation of purpose made by petitioners cannot change these controlling facts. Cf. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 324 (1936). As the Court of Appeals held, based on the undisputed specific space allocations in the plan:

> "The operations and subsequent proposals of the Authority since the decision of the *Courtesy* case (*supra*) are consistent with the primary purposes mandated by the legislation under which it has acted." 18 N. Y. 2d 250, 253.

bound by the State courts' construction of the State statute. Thus, as this Court said in *Hebert* v. *Louisiana*, 272 U. S. 312, 316-17 (1926):

> "* * * the accused contend here, as they did in that [the state] court, that the construction [of the state legislation] was wrong and, being wrong, operated as a denial of due process of law in the sense of the 14th Amendment. * * * All that would be open in this court under the due process clause is whether the state had power to impose the penalty fixed by the statutes as thus construed. Rawlins v. George, 201 U. S. 638, 640, * * *. That the state had such power is not questioned, but only that the statutes rightly construed show that the power has been exercised. On this question, as we have said, the decision of the supreme court of the state is controlling."

To the same effect see also *N. A. A. C. P.* v. *Button*, 371 U. S. 415, 432 (1963); *Terminiello* v. *Chicago*, 337 U. S. 1, 4 (1949).

Petitioners concede that they are bound by the State court interpretation that the statute authorizes allocation of space for State government offices (Pet. 17-18). Inconsistently, they still challenge the binding effect of the State court interpretation that the statute authorizes the contemplated functional plan *in toto*, citing *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945); *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652 (1945) and *Spano* v. *New York*, 360 U. S. 315 (1959).

These cases involve respectively the right of a state to burden interstate commerce by limiting the number of cars in a railroad train, to tax imports and to extract a confession from a murder suspect. The challenged State action in each was absolutely prohibited by the Federal Constitution and could not be authorized by State legislation no matter how construed.

In contrast, what is specifically complained of here is perfectly valid under the due process clause of the Four-

teenth Amendment—the acquisition of private property to house New York State offices and the offices of one of its governmental agencies.

Respectfully submitted,

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November 23, 1966.